

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARY FULFORD,

Plaintiff,

**ANSWER TO FIRST
AMENDED COMPLAINT**

-against-

Docket No. 07-CV-8247 (BSJ)(RLE)

JURY TRIAL DEMANDED

CITY OF NEW YORK, et al.,

Defendants.

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Defendants City of New York, Sergeant Robert Byrne and Police Officer Leonardo Caputo by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its Answer to the First Amended Complaint (“Complaint”), respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph “1” of the Complaint, except admit that plaintiff purports to proceed as stated therein.
2. Deny the allegations as set forth in paragraph “2” of the Complaint.
3. Deny the allegations set forth in paragraph “3” of the Complaint, except admit that plaintiff purports to bring this action and to seek relief as stated therein.
4. Deny the allegations set forth in paragraph “4” of the Complaint, except admit that plaintiff purports to bring this action and to invoke the Court’s jurisdiction as stated therein.
5. Deny the allegations as set forth in paragraph “5” of the Complaint.
6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit that plaintiff purports to invoke this Court’s jurisdiction and to seek relief as stated therein.

7. Deny the allegations set forth in paragraph “7” of the Complaint, except admit that plaintiff purports to invoke this Court’s supplemental jurisdiction as stated therein.

8. Deny the allegations set forth in paragraph “8” of the Complaint, except admit that plaintiff purports to invoke this Court’s supplemental jurisdiction as stated therein.

9. Deny the allegations as set forth in paragraph “9” of the Complaint, except admit that plaintiff purports to bring this action as stated therein.

10. Deny the allegations set forth in paragraph “10” of the Complaint, except admit that a document purporting to be a Notice of Claim was received by the Comptroller’s Office on June 21, 2007 and that the claim has not been settled or adjusted.

11. Deny the allegations set forth in paragraph “11” of the Complaint, except admit that a Summons and Complaint for this action was filed in the United States District Court for the Southern District of New York on September 21, 2007.

12. Deny the allegations set forth in paragraph “12” of the Complaint, except admit that plaintiff purports to invoke this Court’s jurisdiction as stated therein.

13. The allegations set forth in paragraph “13” of the Complaint do not constitute a factual averment to which a response is required.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint, except admit that defendant City of New York is a municipal corporation, duly organized and existing under the laws of the State of New York, and that the New York City Police Department is an agency of the City of New York.

16. Deny the allegations set forth in paragraph “16” of the complaint, except admit that Leonardo Caputo is employed by the City of New York as a police officer, and state that the allegations concerning whether Leonard Caputo is an agent or employee of the City of New York acting within the course of his duties and functions as a police officer are legal conclusions rather than averments of fact and, accordingly, no response is required.

17. Deny the allegations set forth in paragraph “17” of the complaint, except admit that Robert Byrne is employed by the City of New York as a police officer, and state that the allegations concerning whether Robert Byrne is an agent or employee of the City of New York acting within the course of his duties and functions as a police officer are legal conclusions rather than averments of fact and, accordingly, no response is required.

18. Deny the allegations as set forth in paragraph “17” of the Complaint.¹

19. Deny the allegations as set forth in paragraph “18” of the Complaint.

20. Deny the allegations as set forth in paragraph “19” of the Complaint.

21. Deny the allegations as set forth in paragraph “20” of the Complaint.

22. Deny the allegations as set forth in paragraph “21” of the Complaint.

23. Deny the allegations as set forth in paragraph “22” of the Complaint.

24. Deny the allegations as set forth in paragraph “23” of the Complaint.

25. Deny the allegations as set forth in paragraph “24” of the Complaint.

26. Deny the allegations as set forth in paragraph “25” of the Complaint.

27. Deny the allegations as set forth in paragraph “26” of the Complaint.

28. Deny the allegations as set forth in paragraph “27” of the Complaint.

29. Deny the allegations as set forth in paragraph “28” of the Complaint.

30. Deny the allegations as set forth in paragraph “29” of the Complaint.

¹ Plaintiff, in error, uses the paragraph “17” two times.

31. Deny the allegations as set forth in paragraph “30” of the Complaint.
32. Deny the allegations as set forth in paragraph “31” of the Complaint.
33. Deny the allegations as set forth in paragraph “32” of the Complaint.
34. Deny the allegations as set forth in paragraph “33” of the Complaint.
35. Deny the allegations as set forth in paragraph “34” of the Complaint.
36. Deny the allegations as set forth in paragraph “35” of the Complaint.
37. Deny the allegations as set forth in paragraph “36” of the Complaint.
38. Deny the allegations as set forth in paragraph “37” of the Complaint.
39. Deny the allegations as set forth in paragraph “38” of the Complaint.
40. Deny the allegations as set forth in paragraph “39” of the Complaint.
41. Deny the allegations as set forth in paragraph “40” of the Complaint.
42. Deny the allegations as set forth in paragraph “41” of the Complaint.
43. Deny the allegations as set forth in paragraph “42” of the Complaint.
44. Deny the allegations as set forth in paragraph “43” of the Complaint.
45. Deny the allegations as set forth in paragraph “44” of the Complaint.
46. Deny the allegations as set forth in paragraph “45” of the Complaint.
47. Deny the allegations as set forth in paragraph “46” of the Complaint.
48. Deny the allegations as set forth in paragraph “47” of the Complaint.
49. Deny the allegations as set forth in paragraph “48” of the Complaint.
50. Deny the allegations as set forth in paragraph “49” of the Complaint.
51. Deny the allegations as set forth in paragraph “50” of the Complaint.
52. Deny the allegations as set forth in paragraph “51” of the Complaint.
53. Deny the allegations as set forth in paragraph “52” of the Complaint.

54. Deny the allegations set forth in paragraph “53” of the Complaint.

55. Deny the allegations set forth in paragraph “54” of the Complaint.

56. Deny the allegations as set forth in paragraph “55” of the Complaint.

57. In response to the allegations set forth in paragraph “56” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

58. Deny the allegations as set forth in paragraph “57” of the Complaint.

59. Deny the allegations as set forth in paragraph “58” of the Complaint.

60. Deny the allegations as set forth in paragraph “59” of the Complaint.

61. In response to the allegations set forth in paragraph “60” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth therein.

62. Deny the allegations as set forth in paragraph “61” of the Complaint.

63. Deny the allegations as set forth in paragraph “57” of the Complaint.²

64. Deny the allegations as set forth in paragraph “58” of the Complaint.

65. In response to the allegations set forth in paragraph “59” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth therein.

66. Deny the allegations as set forth in paragraph “60” of the Complaint.

67. Deny the allegations as set forth in paragraph “61” of the Complaint.

68. Deny the allegations as set forth in paragraph “62” of the Complaint.

69. In response to the allegations set forth in paragraph “63” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of

² Plaintiff incorrectly numbered the remaining paragraphs in the Complaint.

this answer, as if fully set forth therein.

70. Deny the allegations as set forth in paragraph “64” of the Complaint.

71. Deny the allegations as set forth in paragraph “65” of the Complaint.

72. Deny the allegations as set forth in paragraph “66” of the Complaint.

73. In response to the allegations set forth in paragraph “67” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth therein.

74. Deny the allegations as set forth in paragraph “68” of the Complaint.

75. Deny the allegations as set forth in paragraph “69” of the Complaint.

76. Deny the allegations as set forth in paragraph “70” of the Complaint.

77. In response to the allegations set forth in paragraph “71” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth therein.

78. Deny the allegations as set forth in paragraph “72” of the Complaint.

79. Deny the allegations as set forth in paragraph “73” of the Complaint.

80. Deny the allegations as set forth in paragraph “74” of the Complaint.

81. In response to the allegations set forth in paragraph “75” of the Complaint, defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth therein.

82. Deny the allegations as set forth in paragraph “76” of the Complaint.

83. Deny the allegations as set forth in paragraph “77” of the Complaint.

84. Deny the allegations as set forth in paragraph “78” of the Complaint.

85. In response to the allegations set forth in paragraph “79” of the Complaint,

defendant repeats and realleges the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth therein.

86. Deny the allegations as set forth in paragraph “80” of the Complaint.

87. Deny the allegations as set forth in paragraph “81” of the Complaint.

88. Deny the allegations as set forth in paragraph “82” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

89. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

90. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

91. Punitive damages cannot be awarded against the City of New York.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

92. At all times relevant to the acts alleged in the Complaint, the duties and functions of defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, the City of New York is entitled to governmental immunity from liability.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

93. Any injury alleged to have been sustained by plaintiffs resulted from plaintiff’s own culpable or negligent conduct or that of a third party and was not the proximate result of any act of the defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

94. Plaintiff caused or provoked any incident.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

95. At all times relevant to the acts alleged in the Amended Complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

96. Plaintiff lacks standing to seek declaratory and/or injunctive relief.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

97. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

WHEREFORE, defendants request judgment dismissing the Amended Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 2, 2008

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Robert Byrne and Police Officer Leonardo Caputo*
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By: /s/ Hugh A. Zuber
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